

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

THONG VAN NGUYEN

Claimant

VS.

IBP, INC.

Respondent

Self-Insured

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Docket No. 202,865

ORDER

Respondent appealed the January 4, 1999 award entered by Administrative Law Judge Pamela J. Fuller. The Director appointed Jeffrey K. Cooper of Topeka, Kansas, to serve as Board Member Pro Tem in place of Gary M. Korte who recused himself from this proceeding.

APPEARANCES

Chris A. Clements of Wichita, Kansas, appeared for the claimant. Gregory D. Worth of Lenexa, Kansas, appeared for the respondent.

RECORD AND STIPULATIONS

The record considered by the Appeals Board and the parties' stipulations are listed in the award. Also, the parties have stipulated that the February 21, 1997 medical report prepared by Dr. Lawrence R. Blaty is part of the evidentiary record and should be considered by the Board in this appeal.

ISSUES

This is a claim for a September 8, 1994 accident and resulting left shoulder injury. Persuaded by Dr. Brown's opinions, the Judge found that claimant had a 19 percent functional impairment to the right upper extremity and awarded claimant permanent partial disability benefits for that "scheduled" injury.

Respondent contends the Judge erred. It argues that claimant's functional impairment to the left upper extremity is 14.5 percent, which is obtained by averaging

Dr. Blaty's 10 percent rating with Dr. Brown's 19 percent rating. Conversely, claimant argues that Dr. Brown's opinion is more credible and, therefore, the Board should affirm the award.

The only issue before the Board on this appeal is the nature and extent of claimant's injury and disability.

FINDINGS OF FACT

After reviewing the entire record, the Board finds:

1. The parties stipulated that Mr. Nguyen injured his left shoulder while working for IBP, Inc. Additionally, the parties stipulated that the date of accident for purposes of this claim for workers compensation benefits is September 8, 1994.
2. Mr. Nguyen sought medical treatment for his shoulder on September 9, 1994. After a period of conservative treatment and several injections, in May 1995 Mr. Nguyen had an arthroscopic acromioplasty and an open excision of the distal clavicle. In August 1996, he had a second arthroscopic surgery consisting of a debridement of a frayed labial tear and a subacromial decompression.
3. In February 1997, Lawrence R. Blaty, M.D., examined Mr. Nguyen to evaluate the nature and extent of his work-related injuries. In his February 21, 1997 report, Dr. Blaty states:

ASSESSMENT: 1) Postoperative left arthroscopic subacromial decompression, healing.

IMPRESSION: On review of the patient's previous records, although he has some persistent complaints with the left shoulder, this appears to be improved over his previous complaints prior to the surgery provided. He may have some difficulties with the use of the shoulder, however, overall, he should do fairly well.

Based on my physical findings in accordance with the information in the AMA Guides, Third Edition (Revised), the patient has a permanent partial impairment of 10% to the level of the left upper extremity for the shoulder involvement, which corresponds to a 6% whole body impairment, based on Chapter III.IG of the AMA Guides.

4. Because the parties could not agree upon a functional impairment rating, in March 1998 the Division appointed orthopedic surgeon C. Reiff Brown, M.D., to conduct an independent medical evaluation. In his April 14, 1998 report, Dr. Brown concludes:

In my opinion this man has residuals of rotator cuff, biceps tendonitis, acromial impingement of the left shoulder, the result of the work activities that have been described. According to the Third Revised Edition of the Guides to the Evaluation of Permanent Impairment, there is a 5% impairment of the left upper extremity as a result of loss of range of motion taken from Figures 38, 41 and 44.

There is an additional 10% impairment of the left upper extremity as a result of crepitus present with active range of motion taken from Table 17, Page 48. There is an additional 5% impairment of the left upper extremity as a result of the weakness calculated by the Formula and Table 23, both on Page 54. These combine to 19% permanent partial impairment of function of the left upper extremity. In my opinion this man should permanently avoid use of the left hand above shoulder level and use for push, pull and reach greater than 18 inches away from the body in any direction. No lifting limit exists between floor and waist. Between waist and chest level he should limit lifting to 20 pounds frequently, 40 pounds occasionally. He is at a point of maximum medical benefit.

5. Considering both doctors' opinions of functional impairment rating, the Board is persuaded by Dr. Brown. The Board agrees with the Judge that Mr. Nguyen has a 19 percent impairment to the left upper extremity as a result of the injuries he sustained while working for IBP.

CONCLUSIONS OF LAW

1. The award should be affirmed.

2. The Workers Compensation Act provides that a worker is entitled to a maximum of 225 weeks of permanent partial disability benefits for a shoulder injury.¹ As provided by regulation,² the number of weeks of temporary total disability benefits (19.43) is subtracted from 225 and the resulting number is then multiplied by the 19 percent functional impairment rating. That computation yields 39.06, which is the number of weeks of permanent partial disability compensation that Mr. Nguyen is entitled to receive in this claim.

AWARD

¹ K.S.A. 44-510d(a)(13).

² K.A.R. 51-7-8.

WHEREFORE, the Appeals Board affirms the January 4, 1999 award entered by Judge Pamela J. Fuller.

IT IS SO ORDERED.

Dated this ____ day of May 1999.

BOARD MEMBER PRO TEM

BOARD MEMBER

BOARD MEMBER

c: Chris A. Clements, Wichita, KS
Gregory D. Worth, Lenexa, KS
Pamela J. Fuller, Administrative Law Judge
Philip S. Harness, Director